

# House Study Bill 191

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CHAIRPERSON SWAIM)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act creating a private cause of action for damages resulting  
2 from certain illegal insurance trade practices and providing  
3 an effective date.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
5 TLSB 2052HC 82  
6 av/je/5

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1 1 Section 1. Section 507B.2, Code 2007, is amended to read  
1 2 as follows:  
1 3 507B.2 DEFINITIONS.  
1 4 When used in this chapter:  
1 5 1. ~~"Person" shall mean any individual, corporation,~~  
1 6 ~~association, partnership, reciprocal exchange, interinsurer,~~  
1 7 ~~fraternal beneficiary association, and any other legal entity~~  
1 8 ~~engaged in the business of insurance, including insurance~~  
1 9 ~~producers and adjusters. "Person" shall also mean any~~  
1 10 ~~corporation operating under the provisions of chapter 514 and~~  
1 11 ~~any benevolent association as defined and operated under~~  
1 12 ~~chapter 512A. For purposes of this chapter, corporations~~  
1 13 ~~operating under the provisions of chapter 514 and chapter 512A~~  
1 14 ~~shall be deemed to be engaged in the business of insurance.~~  
1 15 2. ~~1.~~ "Commissioner" shall mean the commissioner of  
1 16 insurance of this state.  
1 17 2. "Consumer" shall mean an individual or the individual's  
1 18 legal representative, a corporation, a partnership, or any  
1 19 other entity that is suable under a common name.  
1 20 3. "Insurance policy" or "insurance contract" shall mean  
1 21 any contract of insurance, indemnity, subscription,  
1 22 membership, suretyship, or annuity issued, proposed for  
1 23 issuance, or intended for issuance by any person.  
1 24 4. "Person" shall mean any individual, corporation,  
1 25 association, partnership, reciprocal exchange, interinsurer,  
1 26 fraternal beneficiary association, and any other legal entity  
1 27 engaged in the business of insurance, including insurance  
1 28 producers and adjusters. "Person" shall also mean any  
1 29 corporation operating under the provisions of chapter 514 and  
1 30 any benevolent association as defined and operated under  
1 31 chapter 512A. For purposes of this chapter, corporations  
1 32 operating under the provisions of chapter 514 and chapter 512A  
1 33 shall be deemed to be engaged in the business of insurance.  
1 34 Sec. 2. Section 507B.7, subsection 1, paragraph b, Code  
1 35 2007, is amended to read as follows:  
2 1 b. Suspension or revocation of the license of a person as  
2 2 defined in section 507B.2, ~~subsection 1~~, if the person knew or  
2 3 reasonably should have known the person was in violation of  
2 4 this subtitle.  
2 5 Sec. 3. NEW SECTION. 507B.15 PRIVATE CAUSE OF ACTION.  
2 6 1. A consumer who suffers damage or injury as the result  
2 7 of a practice that has been determined by the commissioner to  
2 8 violate a provision of section 507B.3, 507B.4, 507B.4A,  
2 9 507B.5, 507B.9, or 507B.14, or a rule adopted pursuant to any  
2 10 of those sections, may bring an action at law to recover  
2 11 actual damages and, if the showing required by chapter 668A is  
2 12 made, punitive damages. The court may order such equitable  
2 13 relief as it deems necessary to protect the public from  
2 14 further violations, including temporary and permanent  
2 15 injunctive relief.  
2 16 2. A preponderance of the evidence shall be required to  
2 17 support a claim under this section.

2 18 3. The court shall award to a consumer who is the  
2 19 prevailing party in an action brought under this section the  
2 20 costs of the action and the consumer's reasonable attorney  
2 21 fees, including litigation expenses.  
2 22 4. This section shall not be construed to affect a  
2 23 consumer's right to seek relief under any other theory of law.  
2 24 Sec. 4. EFFECTIVE DATE. This Act, being deemed of  
2 25 immediate importance, takes effect upon enactment.  
2 26 EXPLANATION  
2 27 This bill creates a private cause of action for damages to  
2 28 consumers that result from certain illegal insurance trade  
2 29 practices.  
2 30 The bill defines a "consumer" as an individual or the  
2 31 individual's legal representative, a corporation, a  
2 32 partnership, or any other entity that is suable under a common  
2 33 name.  
2 34 The bill provides that a consumer who suffers damage or  
2 35 injury as the result of a practice that has been determined by  
3 1 the commissioner of insurance to violate specified provisions  
3 2 of Code chapter 507B, may bring an action at law to recover  
3 3 actual and punitive damages. The standard of proof to prevail  
3 4 on a claim under this section is by a preponderance of the  
3 5 evidence. The bill authorizes the court to order equitable  
3 6 relief as it deems necessary to protect the public from  
3 7 further violations, including temporary and permanent  
3 8 injunctive relief.  
3 9 The bill requires the court to award a consumer who is the  
3 10 prevailing party in such an action the costs of the action  
3 11 plus reasonable attorney fees, including litigation expenses.  
3 12 The bill does not affect a consumer's right to seek relief  
3 13 under any other theory of law.  
3 14 The bill is effective upon enactment.  
3 15 LSB 2052HC 82  
3 16 av:nh/je/5.1